

SANDLER, REIFF & YOUNG, P.C.

50 E STREET, S.E., SUITE 300
WASHINGTON, DC 20003

JOSEPH E. SANDLER
sandler@sandlerreiff.com
NEIL P. REIFF
reiff@sandlerreiff.com

TELEPHONE: (202) 479-1111
FACSIMILE: (202) 479-1115

COUNSEL:
JOHN HARDIN YOUNG
young@sandlerreiff.com

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April 27, 2001

Ms. Rosemary Center
General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Dear Ms. Center:

The undersigned counsel represents the Kentucky Democratic Party (“KDP”). On behalf of the KDP, I am writing to seek an advisory opinion from the Kentucky Registry of Election Finance (“KREF”) in accordance with KRS § 121.135 regarding the application of Chapter 121 of the Kentucky Laws to the questions posed below. Specifically, the KDP wishes to raise and expend funds, into a separate, segregated account, to be used in connection with the lobbying of the Kentucky legislature in connection with the upcoming redistricting of congressional and legislative districts by the legislature.

Thus, the questions presented by the KDP are as follows:

- (1) Are expenditures made by the KDP in connection with lobbying the Kentucky legislature in the upcoming redistricting of congressional and legislative districts by the legislature considered "allowable campaign expenditures" as defined by KRS § 121.175.
- (2) If the answer to Question 1 is No, may the KDP establish a separate segregated account for the purpose of raising and expending funds for the purposes of undertaking lobbying activities in Question 1 where such funds would not be subject to the prohibitions and limitations of Kentucky campaign finance laws?
- (3) Would such an account be required to file disclosure statements with the KREF?

Legal Background

Kentucky election law defines a "contribution" as any "[p]ayment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization. KRS § 121.015(6)(a). The term "committee" includes an executive committee of a political party, as well as a "permanent committee" which includes a party executive committee "which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year. KRS § 121.015(3)(c),(d).

Kentucky law prohibits committees, including party executive committees from expending funds for any purpose other than "allowable campaign expenditures." Such expenditures must be "made directly and primarily in support for or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot..." KRS § 121.175(1).

Kentucky law prohibits corporations from making contributions or expenditures "towards the nomination or election" of any Kentucky candidate. KRS § 121.025. See also KRS § 121.035. Furthermore, Kentucky law limits the amount that may be contributed to a party executive committee to \$2,500 per calendar year, \$1,000 of which may be used to directly support Kentucky candidates. KRS § 121.150(11). The remaining \$1,500 must be deposited into a segregated account and spent on administrative costs consistent with KRS § 121.175.

Discussion

With respect to its proposed lobbying activities, the KDP believes that Kentucky law requires it to establish a segregated account into which it may raise funds that are outside the scope of Kentucky election laws. First, the Kentucky Registry has ruled that lobbying expenditures are not considered an "allowable campaign expenditure" under KRS § 121.175. Accordingly, the Registry advised the Kentucky Academy of Trial Attorneys, a Kentucky committee, that activity in connection with the opposition of legislation "does not appear to be related to an issue which will appear on the ballot." Accordingly, the expenditure was prohibited by KRS § 121.175. Based on this opinion, it is the KDP's understanding that lobbying efforts in connection with redistricting would therefore be prohibited by KRS § 121.175, and accordingly the answer to the KDP's Question 1 above would be No.

Since such lobbying activities proposed by the KDP would not be considered "allowable campaign expenditures," it must follow that such expenditures are outside the scope of Kentucky election law. Thus, the KDP would be required to establish a segregated account that would be

permitted to raise funds that were not subject to the prohibitions and limitations of KRS §§121.025 or § 121.150(11). Of course, this account would not make any disbursements that would be considered a contribution under KRS §121.015(6) or make any "allowable campaign expenditures" under KRS § 121.175. It should be noted that this view is consistent with the Federal Election Commission's approach to party redistricting activities. Thus, in FEC Advisory Opinion 1982-14, the FEC advised the Michigan Republican Party ("MRP") that redistricting-related activities, although part of the political process, were not "contributions" or "expenditures" under the Federal Election Campaign Act since such activities were "not considered election influencing activity subject to the requirements of the Act." Accordingly, the FEC ruled that a separate segregated account could be established by the MRP that was not subject to the prohibitions and limitations of federal election law.¹

Although the KDP believes that its segregated redistricting account would not be subject to disclosure to the KREF, it would be willing, at the KREF's request, to file disclosure reports with respect to this redistricting account.

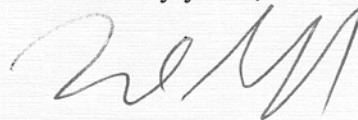
Based on the above, the KDP requests that the KREF issue an advisory opinion that will permit the KDP to establish a separate segregated account for the purpose of lobbying the Kentucky legislature in connection with the redistricting of legislative districts. Furthermore, the KREF should rule that such an account is not subject to the prohibitions and limitations of Kentucky campaign finance laws.

¹ The KDP would also agree that any funds remaining in this segregated account at the conclusion of its lobbying activities would be disposed of in a manner that would comply with Kentucky election laws.

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We appreciate your prompt consideration of this request. If you have any questions, or need any additional information concerning the above, please do not hesitate to contact me at (202) 479-1111.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Neil P. Reiff', written in a cursive style.

Neil P. Reiff

Attachments:

- 1) KREF Advisory Opinion 1995-009
- 2) FEC Advisory Opinion 1982-14